

1619-1625 Amsterdam Ave. LLC v NYS Div. of Hous. & Community Renewal
2020 NY Slip Op 34232(U)
December 21, 2020
Supreme Court, New York County
Docket Number: 151459/2020
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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1619-1625 AMSTERDAM AVENUE, LLC,
Plaintiff,

- v -

NYS DIVISION OF HOUSING AND COMMUNITY
RENEWAL, LUCRETIA KEENAN

Defendant.

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INDEX NO. 151459/2020
MOTION DATE 02/10/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, it is

ORDERED that the petition for relief pursuant to CPLR Article 78 of petitioner 1619-1625 Amsterdam Avenue, LLC (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondent New York State Division of Housing and Community Renewal (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner 1619-1625 Amsterdam Avenue, LLC (landlord) seeks to overturn an order of the respondent New York State Division of Housing and Community Renewal (DHCR) as arbitrary and capricious, and the DHCR cross-moves to dismiss the petition (together, motion sequence number 001). For the following reasons, the petition is denied, the cross motion is granted and this proceeding is dismissed.

FACTS

Respondent Lucretia B. Keenan (Keenan) is the tenant of record of apartment 21, a rent-stabilized unit in a residential apartment building located at 477 West 140th Street in the County, City and State of New York. *See* verified petition, ¶ 3. Landlord is the building's owner, and the DHCR is the agency which oversees rent-stabilized housing that is located within New York City. *Id.*, ¶¶ 1, 2.

On July 28, 2016, Keenan filed an administrative rent overcharge claim against landlord with the DHCR. *See* verified petition, ¶ 7. On November 28, 2018, a DHCR rent administrator (RA) granted her petition in a decision that calculated her rent overcharge with a formula that used a "four-year base date" to determine apartment 21's legal regulated rent (the RA's order). *Id.*, ¶ 6; exhibit B. At this point, the New York State Legislature passed the "Housing Stability and Tenant Protection Act of 2019" (HSTPA), which took effect on June 19, 2019 and substantially amended the Rent Stabilization Law (RSL). Keenan soon thereafter filed a petition for administrative review (PAR) to challenge the RA's rent overcharge calculations. *Id.*, ¶ 8. On December 12, 2019, the DHCR Deputy Commissioner's office issued a decision that that did not dispose of Keenan's PAR, but instead remanded her rent overcharge complaint to the RA for

further consideration in light of the RSL changes caused by the HSTPA (the PAR order). *Id.*, ¶ 9; exhibit A.

Landlord commenced this Article 78 proceeding on February 9, 2020 to challenge the PAR order on the ground that it was error for the DHCR Deputy Commissioner to remand Keenan’s rent overcharge complaint to the RA. *See* verified petition. At this point, the Covid-19 national pandemic caused the court to suspend most of its operations indefinitely. Nevertheless, the parties stipulated to several extensions of time for the DHCR to respond. Rather than file an answer, the DHCR eventually submitted a cross motion to dismiss landlord’s petition on August 21, 2020. *See* notice of cross motion. The matter is now fully submitted (together, motion sequence number 001).

DISCUSSION

Pursuant to CPLR 7801 (1), an Article 78 proceeding “shall not be used to challenge a determination . . . which is not final.” Pursuant to Rent Stabilization Code (RSC) § 2520.6 (t), “[a] final order shall be . . . an order of the commissioner, unless such order remands the proceeding for further consideration.” The Appellate Divisions have long recognized that an Article 78 proceeding may not be commenced absent a final administrative determination from the DHCR. *See e.g., Matter of Trump Vil. Apts. One Owner v New York State Div. of Hous. & Community Renewal*, 143 AD3d 996 (2d Dept 2016); *Matter of Clermont Tenants Assn. v New York State Div. of Hous. & Community Renewal*, 73 AD3d 658 (1st Dept 2010); *Matter of Weinreb Mgt. v New York State Div. of Hous. & Community Renewal*, 297 AD2d 221 (1st Dept 2002). Here, the Deputy Commissioner’s December 12, 2019 PAR order is not a “final order” because it clearly provides for an administrative remand when it concludes as follows:

“THEREFORE, in accordance with the applicable provisions of the [RSL] as amended, it is

“ORDERED, that the proceeding be, and the same hereby is, remanded to the [RA] for a determination in accordance with the current rent law, and in accordance with this Order.”

See verified petition, exhibit A. As a result, CPLR 7801 (1) precludes landlord from seeking judicial review of that order in an Article 78 proceeding. Once the DHCR issues a final agency order with respect to Keenan’s rent overcharge claim, landlord may challenge it pursuant to CPLR Article 78, should it choose to. At this juncture, however, the court finds that landlord’s Article 78 petition should be denied without prejudice as premature, and that the DHCR’s cross motion to dismiss this proceeding should be granted.

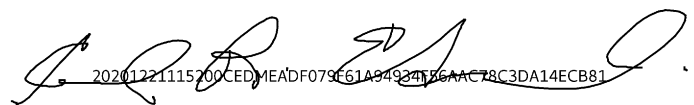
CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the petition for relief pursuant to CPLR Article 78 of petitioner 1619-1625 Amsterdam Avenue, LLC (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondent New York State Division of Housing and Community Renewal (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.



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<u>12/21/2020</u>			
DATE		CAROL R. EDMEAD, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE